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Department of Commerce
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RE: Docket Number 170302221-7221-01
Impact of Federal Regulations on Domestic Manufacturing
82 Fed. Reg. 12786 (March 7, 2017)
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

To Whom It May Concern:

BP America Inc. hereby submits its response to the March 7, 2017 Request for Information (RFI) from the Department of Commerce.

BP America Inc. and its various corporate subsidiaries and affiliates (collectively “BPA”) have been operating in the US for more than 150 years through our heritage companies. We are America’s No. 1 energy investor over the past decade — with \$90 billion invested — and we recently announced a new \$9 billion project in the deepwater Gulf of Mexico called Mad-Dog 2. We directly employ more than 14,000 people in the US, and our operations support an additional 130,000 American jobs. We operate as an integrated business with investments and operations across the entire value chain, from onshore and offshore oil and gas production to petrochemicals to refining and retail marketing of fuels and lubricants. We also operate a large integrated supply and trading business and we are the largest marketer of natural gas in North America. Finally, we have the largest operated renewable energy business of any major international oil and gas company, including 13 wind farms in the US.

Given our material energy investments in America, we are acutely aware of and affected by the complex web of federal permitting processes and regulations applicable across our operations. Thus, we support the objective of this RFI to improve the “efficiency, transparency and certainty” in the permitting and rulemaking processes. Improvements in those areas will allow US manufacturers and energy investors to maximize their contribution to the growth of the US economy without undermining the important role that federal agencies play. We believe that this goal can be achieved through:

- More streamlined and efficient permitting that provides greater certainty earlier in the process; and
- Well-designed regulations that are adopted after a rigorous, transparent process weighing benefits and cost, narrowly tailored to achieve their policy objectives, and enforced in an even-handed manner.



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In the attached response, we identify some of the most significant challenges that federal permitting processes and regulations present for our US businesses and, most importantly, offer our specific suggestions for potential improvements or reforms. In doing so, we note that:

1. Because permitting and regulatory burdens cannot always be viewed in isolation, but often act in concert to compound the burdens imposed, our responses on these issues overlap in some cases.
2. Energy investments and operations are profoundly affected not only by processes for obtaining "permits" in the narrowest sense of that term, but also by the equally complex array of processes for securing federal leases and other authorizations required to develop energy resources. Thus, to make our response as informative as possible, we have interpreted the RFI broadly to cover federal leases and other federal authorizations to operate.
3. We have provided responses for our operations beyond NAICS codes 31-34 because they are significant businesses that contribute broadly to the US economy and would benefit from the types of reforms contemplated by the RFI.
4. We have not commented on those major regulations affecting our industry that are the subject of ongoing review under the Congressional Review Act, notably the BLM Venting & Flaring rule and the EPA RMP rule. If these rules are not repealed by Congress, we believe they should be reconsidered or revoked given that, in each case, one federal agency duplicates the work of another.

Thank you for this opportunity to provide our input on these important issues, and please feel free to contact me with any questions regarding the attached submission.

Sincerely Yours,

Robert L. Stout, Jr.

General Information Requested

1. NAICS code(s)

For purposes of this response, we are commenting with respect to the following U.S. businesses:

- Refining of Crude Oil (NAICS code 32)
- Petrochemicals (NAICS code 32)
- Pipelines (NAICS code 48)
- Onshore Lower 48 (L48) oil and gas (NAICS code 21)
- Alaska oil and gas (NAICS code 21)
- Gulf of Mexico oil and gas (NAICS code 21)

The RFI explicitly sought information re NAICS code 31-33 related to “Manufacturing” but encouraged responses on related topics. Thus, we have included information related to all of our U.S. businesses. All of these businesses engage in domestic U.S. “manufacturing” in a broad sense, contribute significantly to the U.S. economy and would benefit from permitting and regulatory relief.

We have a number of businesses that are not discussed in this response, including BP Wind Energy, Air BP, BP Shipping, Castrol and Integrated Supply and Trading. These businesses too would benefit from reduced federal permitting and regulatory burdens, even though they are outside the scope of this RFI.

2. What do you manufacture?

- Our U.S. refineries process/produce motor gasoline, diesel (including ultra-low-sulfur), jet fuel, propane, kerosene, asphalt, calcined coke and butane.
- Our U.S. petrochemical plants manufacture purified terephthalic acid (PTA), paraxylene (PX) and metaxylene (MX).
- Our U.S. Pipelines business transports crude and refined products.
- Our Onshore L48 business explores for and produces natural gas, natural gas liquids, condensate and oil.
- Our Alaska oil and gas business explores for and produces oil and gas.
- Our Gulf of Mexico business explores for and produce natural gas, natural gas liquids and oil.

3. Where are your facilities located?

- Refineries: Whiting, Indiana; Blaine, Washington; Oregon, Ohio
- Petrochemical plants: Wando, South Carolina; Texas City, Texas
- Pipelines: Illinois, Oklahoma, Washington, Oregon and the Gulf of Mexico
- Onshore Lower 48 oil & gas: Colorado, New Mexico, Oklahoma, Texas and Wyoming
- Alaska oil & gas: Anchorage and the North Slope of Alaska
- Gulf of Mexico: BP operates four platforms in the outer continental shelf

4. How many employees?

We have more than 14,000 employees in the U.S.

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5. Approximate sales revenue?

The total revenue from our U.S. operations was approximately \$69 billion in 2016.

Questions Concerning Manufacturing Permitting Process

1. How many permits from a Federal agency are required to build, expand or operate your manufacturing facilities? Which Federal agencies require permits and how long does it take to obtain them?

BP America (BPA) facilities, as well as many individual operating units within them, are required to procure and maintain a diverse array of permits from federal agencies. The aggregate number of all such permits is difficult to estimate, but likely runs into the hundreds. Required federal permits affecting our operations include the following:

- EPA: Clean Air Act operating ("Title V") and construction permits ("PSD" and "NSR")
- EPA: Clean Water Act discharge permits ("NPDES")
- EPA: Nationwide Permits (NWP) or Section 404 permits for projects that impact waters of the United States
- EPA: Resource Conservation and Recovery Act waste management permits
- EPA: Safe Drinking Water Act permits, including Underground Injection Control permits
- EPA: Registration of fuels under 40 CFR Part 79 and the registration of refineries, import facilities, and distribution facilities under 40 CFR Part 80
- DoC (NMFS) and DOI (FWS): Incidental Take Permits related to endangered and threatened species and marine mammals
- Army Corps of Engineers: Nationwide Permits
- DOI: Applications for Permits to Drill (APDs) for oil & gas wells on federal and Indian Lands
- BOEM: Geophysical and Geotechnical Permits (seismic operations permits)
- BOEM: Exploration Plan (EP); Development Operations Coordination Document (DOCD)
- BSEE: Deepwater Operations Plan (DWOP)

The length of the permitting process varies widely but some permits can take years to obtain.

2. Do any of the Federal permits overlap with (or duplicate) other federal permits or those required by state or local agencies? If the answer is yes, how many permits? From which Federal agencies?

There is considerable overlap, particularly with respect to air and water permits. BPA endorses the comments submitted by the National Environmental Development Association's Clean Air Project (NEDA/CAP) on this point. Of particular note, the Clean Air Act permitting programs are often delegated to the states for implementation but EPA retains oversight. In some circumstances, EPA interferes in the state permitting decisions and can delay the process and change the permit terms.

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3. *Briefly describe the most onerous part of your permitting process.*
4. *If you could make one change to the Federal permitting process applicable to your manufacturing business or facilities, what would it be? How could the permitting process be modified to better suit your needs?*

There are many onerous features of the federal permitting process and we highlight three in particular here. On each of these three points, we have combined our responses to Questions 3 and 4 into a detailed response addressing the permitting/leasing processes as well as suggested improvements.

1. Reforming the NEPA Process: Council on Environmental Quality, 40 CFR 1500-1508

The 1970 National Environmental Policy Act (NEPA) broadly requires federal agencies to assess the environmental impact of -- and alternatives to -- "major federal actions significantly affecting the environment." NEPA created the Council on Environmental Quality (CEQ), which then promulgated implementing regulations at 40 CFR 1500-1508. For example, if a federal action like a 5 year oil & gas leasing plan may have an impact that an agency deems "significant," NEPA would call for an Environmental Impact Statement (EIS).

BP shares the overall goal of NEPA to ensure that potential environmental impacts are considered, and reasonable steps are taken to mitigate them, in the planning, development and operation of energy projects. Indeed, BP works to understand the environments in which we operate and to avoid and minimize our direct impacts on the environment. Our requirements and global practices are set out in our group-wide operating management system.

But while the overall intent of NEPA is laudable, its implementation in practice can be highly bureaucratic, complex and cumbersome, creating substantial uncertainty and delay in the permitting of projects. In BP's experience, an EIS can take many years to complete and cost millions of dollars to prepare.

The NEPA and EIS process should be substantially reformed and streamlined so that the environmental purpose of the statute is met while driving toward finality in a reasonable amount of time, avoiding adding new requirements late in the process. Delay and uncertainty about project requirements can kill projects and the jobs that they create. For complex projects that involve multiple federal agencies, a federal coordinator or ombudsman could help drive the process. This could take the form contemplated by the Executive Order entitled "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," which would assign such a role to CEQ.

Finally, the NEPA and EIS process has been even further complicated by other voluminous guidance documents that likewise may be well intentioned but in practice create another layer of complexity and delay. We support the mitigation policy review outlined in Secretarial Order 3349 (issued March 29, 2017). This review presents an opportunity to remove layers of complexity related to mitigation policies and practices adopted in recent years by DOI. We recommend that the following specific guidance documents should be reviewed as part of the mitigation policy review:

- DOI Guidance on Landscape Scale Mitigation issued on November 3, 2015
- FWS Mitigation Policy issued on November 21, 2016
- FWS Endangered Species Act Compensatory Mitigation Policy proposed on September 2, 2016

2. Clean Air Act Preconstruction Permits: EPA, 40 CFR Part 52

The process for obtaining Clean Air Act preconstruction permits is lengthy (often 1- to 2-years), complex, and costly. These burdens discourage capital investment and drive sub-optimal decisions such as running existing equipment longer than desired to avoid the permitting burden triggered by replacing that equipment. We are a member of the National Environmental Development Association's Clean Air Project (NEDA/CAP) and we endorse their more detailed comments on this general topic.

We would highlight a lesser-known problem with the permitting process that can needlessly prevent the commencement of construction on major projects, and thus delay the economic and jobs benefits that these projects create. Specifically, EPA has adopted an unduly restrictive interpretation of when a construction permit is required under the Clean Air Act to bar even activities that would not create emissions regulated by the Act. EPA has used this interpretation to issue Notices of Violation for activities such as installing area lighting, electrical preparations, and site drainage, even though such construction is not part of the future process unit that would generate regulated emissions. As a result, companies are forced to delay such activities on pain of enforcement. For facilities in northern areas with short construction seasons, even a short delay in issuing the permit can mean a loss of a complete construction season, resulting in months of delay in completion of the project and realization of its benefits.

Consistent with its authority and the purpose of the Act, EPA should redefine the term "begin actual construction" in 40 CFR 52.21(b) (11) to allow non-emitting activities (e.g., pouring foundations, electrical preparations) to begin before the final permit is issued. We believe this would hasten the commencement of major projects as permit applicants would be willing to assume the risk of stranding an investment in some of these preparatory, non-emitting activities in order to mitigate the effects of a potential lost construction season.

3. Reforming the Gulf of Mexico (GoM) Leasing Program/Practices: DOI (BOEM and BSEE)

The leasing program administered by the Department of Interior (specifically BOEM & BSEE) has not adjusted to account for the new challenges facing industry as it pursues more complex resources. We are drilling at greater depths into higher temperature and pressure reservoirs while at the same time facing stronger competition for scarcer investment dollars in a lower-price environment. The number of operators in the GoM is shrinking and the level of interest in bidding on new leases is below historic levels. Overall, for the onshore and offshore, while production of oil and gas on private lands has increased dramatically in recent years, the production of oil and gas on federal lands has remained flat or fallen. We believe that reforming the leasing program could unlock further resources in the GoM, creating additional economic investment and jobs as well as increased royalties to the federal government.

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Even without new legislation, DOI has the authority to improve the prospects for GoM development by taking action in the following areas:

- **Lease terms:** Make primary lease terms longer for more complex projects.
- **Suspensions:** Use discretion to grant suspensions (which extend a primary lease term) to parties with proven track records of completing projects.
- **Restricted Bidders:** Explore the means of relaxing the prohibitions on joint bidding by larger producers.
- **Royalties:** Scale the royalty rate to the complexity/cost of the project.

5. Are there Federal, State, or local agencies that you have worked with on permitting whose practices should be widely implemented? What is it you like about those practices?

There are a number of agencies that have permitting approaches and practices that should be more widely implemented. We share the following examples:

First, there are several regional offices in EPA and DOI that are very responsive to permit submittals and are willing to engage to help resolve ambiguities. These regional offices exhibit a problem-solving approach that is refreshing and could be replicated more widely. Permitting does not need to be an adversarial process.

Second, there are permitting programs that avoid most of the burdens of site-specific permitting by spelling out the permit obligations in advance by rulemaking. These “general permits” include standard environmental requirements and other provisions and take a number of forms that are discussed at a high level below:

- The Texas Commission on Environmental Quality (TCEQ) has a “permit by rule” (PBR) program that authorizes routine activities without requiring a permit. Some PBR’s allow construction to begin immediately, others only after TCEQ is notified and others only after TCEQ approval.
- The Wyoming Department of Environmental Quality (WDEQ) has a program that allows construction of certain oil or gas wells prior to obtaining an air permit if the facility meets specified air emission control requirements (known as “presumptive BACT”).
- The Army Corps of Engineers promulgates nation-wide permits (NWP) through rulemaking for certain routine actions that may impact the waters of the U.S. (e.g. maintenance of pipelines). The NWPs specify the conditions to qualify and avoid site-specific permitting. Some of the NWPs require pre-construction notifications but others do not.

The forgoing approaches are efficient, transparent and provide certainty to all of the stakeholders.

Questions Concerning Regulatory Burden/Compliance:

1. Please list the top four regulations that you believe are most burdensome for your manufacturing business. Please identify the agency that issues each one. Specific citation of codes from the Code of Federal Regulations would be appreciated.

2. How could regulatory compliance be simplified within your industry or sector?

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3. Please provide any other specific recommendations, not addressed by the questions above, that you believe would help reduce unnecessary Federal agency regulation of your business.

We address these questions collectively below for four regulations of particular concern to BPA.

1. Renewable Fuel Standard (RFS): EPA, 40 CFR Part 80, Subpart M

The Renewable Fuel Standard (RFS) was created by Congress in 2005 and requires transportation fuel sold in the United States to contain a minimum volume of renewable fuels. The RFS is intended to reduce reliance on foreign oil, reduce greenhouse gases and support rural economic development.

The Blendwall. As biofuel mandates increase, the volume of ethanol required for blending into gasoline exceeds the 10% “blendwall.” Most vehicles and retail infrastructure were designed and approved for blends that contain up to 10% ethanol but not for greater volumes. EPA should recognize these market constraints and use its waiver authority to set the annual obligation below the 10% blendwall.

Maintain the Point of Obligation (PoO). EPA should retain the current PoO under the RFS. Changing the PoO now would disrupt longstanding compliance plans, investments, and commercial agreements that were premised on the current structure. Further, moving the PoO would create additional burdensome compliance and administrative problems that would exacerbate the existing problems. EPA can reduce the overall regulatory burden by retaining the current PoO and moving forward with the reforms necessary to improve the efficiency of the entire RFS program.

Other Reforms. BP believes other common sense reforms should include:

- Establishing separate ethanol and diesel standards based on blend ratios, such as 9.7 percent ethanol and 2 percent biodiesel in the gasoline and diesel pools, respectively. A blend standard of 9.7% recognizes the practical limitation of the 10% blendwall while accommodating transport demand for some gasoline with no ethanol.
- Supporting the growth of sustainable advanced biofuels within the blend levels described above.

2. Ozone Ambient Air Quality Standard: EPA, 40 CFR Parts 50 and 58

BPA, other companies, industry groups, and a bipartisan group of state environmental agency leaders expressed serious concern about the implementation of the National Ambient Air Quality Standard (NAAQS) for ozone, which was lowered in 2015 from 75 ppb to 70 ppb. The ozone NAAQS standard substantially burdens American manufacturers in general and the energy sector in particular. EPA could materially reduce these burdens, while remaining faithful to the letter and spirit of the Clean Air Act, by addressing the following issues:

Complying with 2 Standards. EPA should take action to address the currently overlapping and duplicative ozone standards (the new 2015 standard and the older 2008 standard).¹ For example, we

¹ We also support Congressional action to change the NAAQS review cycle from 5 years to 10 years. The EPA needs more time to review the NAAQS and states need more time to implement the NAAQS to bring areas into compliance before setting a new target.

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believe that EPA could revoke the 2008 Ozone NAAQS without applying complicated “anti-backsliding” provisions, since the 2015 Ozone NAAQS is *more* restrictive than the 2008 Ozone NAAQS.

International Pollution. Background pollution from international sources remains a significant problem. Although Asia is a major contributor to background emissions, EPA currently interprets the Clean Air Act to limit its ability to deal with international pollution to emissions from only Mexico and Canada. EPA should instead adopt an interpretation that accounts for the realities of international transport.

Non-Attainment Designations. When a region is designated as being in non-attainment with the ozone NAAQS, it confronts a cascade of new burdens such as limitations on the permitting of new projects and requirements to install expensive new pollution control equipment. It is legally unwarranted, unfair and unwise to penalize regions by designating them as in non-attainment because of background ozone levels that are beyond their control. Although it has declined to use it, EPA has the authority and discretion to avoid this outcome by excluding ozone exceedances principally attributable to background from determinations of non-attainment. EPA could make this change as part of the current implementation rulemaking² for the new NAAQS, or in a separate rulemaking.

The Exceptional Events Rule. EPA also could help address the problem of background ozone by amending the Exceptional Events Rule (EER) (40 CFR 50.14) finalized in October 2016. Specifically, EPA could provide that when U.S. human-caused sources (in the aggregate) account for only a small portion of a non-attainment event, the event will be attributed to ozone background levels and excluded from the non-attainment determination. This also would relieve the states from the burdensome and sometimes impossible task of quantifying separately each non-human cause of the event.

3. Methane Regulation: EPA and BLM

BP recognizes the importance of controlling methane emissions, and we have implemented best practices — such as green completions and leak detection — to reduce those emissions in our own operations. We also support well-designed, cost-effective regulations.

Unfortunately, EPA and BLM created a complex web of regulations that are both inconsistent with each other and duplicative of state regulations. We have several recommendations to reduce this burden.

Repeal the BLM rule. Federal regulation of onshore air emissions should rest with EPA alone.

Fix the EPA rule. We specifically request that EPA amend its latest onshore air emissions regulation (40 CFR Part 60, Subpart OOOOa) as follows:

- Extend by 1 year the effective date for leak detection and repair requirements;
- Extend by 1 year the compliance period for pneumatic pumps;
- Exempt small volume “stripper wells” from the rule (no more than 15 barrels of oil equivalent per day over a 12-month period);
- Improve the leak detection provisions for approval of alternative monitoring equipment and methods – pattern the provisions more closely after the approach taken in the Colorado regulations; and

² 81 Fed. Reg. 81,276 (Nov. 17, 2016)

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- Include provisions that allow compliance with a state program to be deemed compliance with the federal program.

In the meantime, we will continue our efforts to further reduce BP's methane leakage rate.

4. Carbon Capture Use and Storage (CCUS): EPA, 40 CFR Part 146

BP believes that the federal government can and should act to remove current regulatory barriers and increase American leadership in developing and deploying this important emerging technology by:

1. Adopting a comprehensive framework that addresses, among other things, the long-term liability issues related to the permanent sequestration of carbon. The current Underground Injection Control rules promulgated by EPA are insufficient and must be reformed in order to provide the regulatory predictability required for investment in the technology.
2. Supporting research and development to bring the costs of the technology down to competitive levels. Specifically, BP supports continued federal funding for R&D programs at the Department of Energy, including at the National Energy Technology Laboratory and ARPA-E. In addition, BP will continue its private party efforts to develop the technology as part of the Oil and Gas Climate Initiative (OGCI).

For additional context, we commend the December 2016 report released by Governors Bullock (D, MT) and Mead (R, WY) entitled *Putting the Puzzle Together: State & Federal Policy Drivers for Growing America's Carbon Capture & CO₂-EOR Industry*, which identifies a number of incentives that could be enacted at the federal level to spur the development of this critical technology.